BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Qwest Proposal to Offer Local Service Freeze Protection

ISSUE DATE: May 7, 2002

DOCKET NO. P-421/CI-02-75

ORDER REJECTING LOCAL SERVICE FREEZE OPTION AND REQUIRING THE COMPANY TO STOP OFFERING IT AT THIS TIME

PROCEDURAL HISTORY

On January 17, 2002, Qwest filed a letter informing the Commission that Qwest intended to implement Local Service Freeze (LSF) Protection for its customers in Minnesota, effective January 17, 2002.

On January 25, 2002, the Commission issued a Notice of Qwest's Filing Regarding LSF and requested comments. On February 7, 2002, the Commission granted an extension of time to file comments (February 12) and reply comments (February 22).

From February 1, 2002, through February 22, 2002, the following parties filed comments and reply comments in response to the Commission notice: AT&T, HickoryTech, Qwest, DOC, Allegiance, Astound broadband, the Residential and Small Business Utility Division of the Office of the Attorney General (RUD-OAG), WorldCom, and the CLEC Coalition.

The Commission met on March 21, 2002 to consider this matter.

FINDINGS AND CONCLUSIONS

I. QWEST'S PROPOSAL

On January 17, 2002, Qwest filed a letter informing the Commission that Qwest intended to implement Local Service Freeze (LSF) Protection for its customers in Minnesota. Customers choosing LSF Protection would be protected from unauthorized, illegal switching of a customer's preferred local exchange carrier.[1]

Qwest cited FCC rules and orders which indicate that a preferred carrier freeze (PCF) was lawful, a useful tool against slamming, and would also enhance competition. Qwest stated that the FCC also addressed the concern raised by competitors that this would be a barrier to competition. Qwest reported that the FCC stated that freezes would not be a competitive barrier as long as subscribers fully understood the nature of the freeze and how to remove it if they chose to use this service.

Qwest cited rules and statutes adopted in Washington, Utah, Colorado and 21other states outside Qwest's region also allow or require these freeze options. Qwest argued that this shows that a carrier freeze is a valuable consumer protection and enhances competition.

II. AT&T COMMENTS

AT&T opposed Qwest's plan to implement a local PFC at this time. AT&T stated that Qwest's plan appeared to be an attempt to create customer confusion and to make it difficult for a customer to move to another provider.

AT&T noted that although the FCC has authorized PCFs it also authorized individual states to conclude, after considering factors (such as the incidence of slamming and the development of competition in relevant markets), that the detriment to consumers of a PCF outweighed the benefit. AT&T argued that Qwest had not demonstrated the need of the program and had not shown that it could be implemented without harming competition in the state.

Responding to Qwest's reference to two other state commissions (Washington and Colorado) requiring Qwest to provide a local freeze option, AT&T noted that the Washington and Colorado commissions imposed service freezes for both local and long distance as part of a rulemaking over two years ago. AT&T stated that more recently the trend has been the other way: two commissions (New York and Nebraska) have denied such freezes and in Arizona, Qwest withdrew its local PFC proposal after being strongly opposed by CLECs in that state.

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[1] LSF does for a customer's local service what a PIC Freeze (primary interexchange carrier freeze) does for the customer's long distance service. The general term for both local and long distance freezes is Preferred Carrier Freezes (PCFs). PCFs are authorized (but not required) in FCC Rules, Part 64.1190. A freeze prevents a competing carrier from switching a customer's choice of carrier without the customer lifting the freeze.

III. HICKORYTECH COMMENTS

Crystal Communications, Inc. d/b/a HickoryTech (HT) believes further investigation is necessary before approving Qwest's LSF proposal. HT is a CLEC in Minnesota and offers CLEC services in five Qwest exchanges. HT stated that it was concerned that Qwest intends to offer LSF to inhibit competition for its own self-interest. HT noted that having a LSF on a customer's account would require the customer to contact Qwest to remove the freeze, which would give Qwest a significant marketing opportunity to try to retain the customer. HT asserted that such a marketing effort would clearly be anti-competitive. HT further objected to Qwest offering this service under the guise of protecting the customer. In sum, HT argued that further investigation is necessary to avoid potentially anticompetitive, self-serving actions by Qwest.

IV. ALLEGIANCE TELECOM COMMENTS

Allegiance, a facilities-based CLEC providing service in Minnesota, stated that more information is necessary to judge whether Qwest's LSF proposal should be approved. Allegiance expressed concern that Qwest will not properly administer its proposed LSF program and, as a result, create anticompetitive restrictions on customers wanting to select another carrier. Allegiance recommended that the Commission institute measures that protect consumer choice and competition to guard against improper administration of the LSF protection plan.

V. ASTOUND BROADBAND COMMENTS

Seren Innovations, Inc. d/b/a Astound broadband (Astound), Qwest's only residential facilities-based competitor in the St. Cloud area, recommended rejection of Qwest's LSF proposal. Astound opposed Qwest's LSF plan arguing that it is anticompetitive and only serves Qwest's self-interest to win back customers. Currently, the interaction of switching customers to Astound's service is handled between the service providers. Astound argued that forcing a customer to reject one service provider for another would inhibit many customers from making a switch. Astound stated that this obviously anticompetitive proposal should be rejected.

VI. WORLDCOM COMMENTS

WorldCom recommended that Qwest's service freeze should be suspended because it violates the law, is discriminatory, and harmful to customers and competition. WorldCom argued that Qwest must implement changes to its procedures so that a customer is not burdened when it wishes to lift the LSF. Until those changes are made, WorldCom maintained, Qwest should not be offering its LSF option.

VII. THE DEPARTMENT'S COMMENTS

The Department recommended that the Commission deny Qwest's LSF proposal. If Qwest is able to demonstrate that the benefits exceed the detriments of such a proposal, the Department recommends that it be implemented via a tariff.

The Department stated that Minnesota's regulatory requirements do not prohibit Qwest's LSF proposal but argued that public policy would support denying the proposal. The Department noted that Minnesota law (Statute §237.66, subd. 1a) addresses a customer's option for a long distance carrier freeze but does not address local exchange service freezes. The Department cited Minn. Stat. §237.011, however, which lists telecommunications goals in Minnesota which include the promotion of customer choice, consumer protection and encouraging fair and reasonable competition for local exchange service.

The Department also cited Minn. Stat. 237.761, subp. 1 and Qwest's Alternative Form of Regulation (AFOR) Plan which govern tariff and price list filing requirements. The Department argued that Qwest should be required to file a tariff for its LSF proposal if the Commission does ultimately allow it.

The Department also considered whether local service slamming is a concern in Minnesota. Fewer than 10 complaints have been made according to Qwest's response to an information request. Further, the Department noted that the OAG, which also handles telephone customer complaints, has indicated that there have been no knowing violations of anti-slamming laws by local service providers.

VIII. THE RUD-OAG'S COMMENTS

The RUD-OAG recommended that the Commission reject Qwest's LSF proposal. The RUD-OAG stated that it is not opposed to customers having the option of a LSF but is concerned that Qwest's proposal is not competitively neutral. Qwest's current proposal would allow Qwest to advise customers of the freeze option each time there is a request for a new service, whenever there is a move to a new address, and when a new line is added. The RUD-OAG observed that Qwest appears to want to promote this free service rather than just present it as an option.

The RUD-OAG listed several criteria that it felt must be met before a LSF proposal would be allowable and stated that Qwest's current proposal meets none of these criteria.

IX. QWEST'S REPLY COMMENTS

Qwest responded to concerns raised about 1) the customer notices (agreed to submit LSF bill inserts for Commission review), 2) the frequency and dissemination of information (asserted that the FCC rules requiring clear and neutral language would prevent abuse), 3) notices to CLECs that a freeze had been placed in effect (agreed to inform CLECs), 4) office hours (identified hours that it deemed reasonable), and 4) tariffing of the LSF service (agreed to do so if the Commission requested it).

Regarding the concern that Qwest personnel would try to persuade customers calling to cancel the freeze to continue the service, Qwest stated that it would not do any marketing or make inquiries for anyone calling to remove a freeze. Qwest stated that during customer calls or three-way calls with the new carrier, the customer will identify himself or herself and Qwest will lift the freeze.

Regarding the benefits of the LSF option (need for the service), Qwest stated that FCC, Washington, Colorado, and Utah policymakers supported the benefit of this option. Qwest argued that rather than wait to offer this protection until slamming proliferates in the local market, the customer should be given the choice to decide.

Qwest also argued that a LSF protection advances the telecommunications goals contained in Minn. Stat. §237.11, namely promoting consumer choice and ensuring customer protection. Further, Qwest stated that the LSF is available to Qwest's wholesale customers (CLECs) as well as to Qwest's retail customers.

X. COMMISSION ANALYSIS AND ACTION

The Commission has carefully considered Qwest's LSF service and even assuming the service is administered strictly as Qwest stated in its reply comments, the Commission views the LSF service as having the potential to inhibit local competition, which is at a particularly fragile stage of development in Minnesota. And as a practical matter it would be difficult to assure that in practice the service would not be operated in a way more directly burdensome to competition than Qwest acknowledges.

The Commission acknowledges that negative impact upon competition can be outweighed by a showing of benefit to consumers. However, Qwest has made no showing that slamming by its competitive local service providers is a problem in Minnesota.[2] Therefore, based on the record in this case, no consumer benefit from this offering has been shown.

The Commission notes that protections against slamming at the local level are already in place in Minnesota, should it occur: a company that cannot verify that it had authorization to switch a customer is charged a penalty for not having proper verification. Qwest, in most if not all of its interconnection agreements includes a penalty charge of $100 for submitting an order to switch a customer without having the proof of authorization. The Commission also has authority to penalize a carrier that violates Commission rules or orders. In the absence of evidence to the contrary, it appears that these protections have been adequate to minimize the danger of local slamming in Minnesota and the need for a LSF option.

In fact, simply offering the service suggests that customers need protection from CLECs' local service slamming practices, a suggestion which the record in this case does not substantiate. As such it tends to unfairly disparage and, hence, unfairly burden Qwest's local competitors.

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[2] Decisions in other jurisdictions cited by Qwest (Washington, Colorado, and Utah) are not persuasive of a problem in Minnesota. The Minnesota public agencies participating in this matter (the Department and the RUD-OAG) both indicate a negligible incidence of local slamming and strongly advocated rejection of Qwest's freeze offering.

In these circumstances and given the Commission's statutory obligation to promote local service competition (Minn. Stat. § 237.11), the Commission finds that Qwest's offering of LSF in Minnesota is not in the public interest. The Commission will deny the Company's offering of this service, without prejudice, and direct Qwest to cease and desist (stop) offering it and to not offer any LSF service until the Company has submitted and the Commission has approved another LSF proposal.

As part of not providing the service, any customers who have subscribed to the service will be released from the service. Not offering the LSF service until a new proposal has been submitted and approved includes discontinuing any plans to issue bill inserts or other promotional material about this or any freeze service not approved by the Commission.

ORDER

1. The Commission denies Qwest's January 17, 2002 proposal (introduction of a local service freeze protection offering), without prejudice.

2. The Commission hereby orders Qwest to cease and desist (stop) offering this service or any local service freeze protection service until the Company has submitted and the Commission has approved a proposal to do so.

3. Any customers currently subscribed to Qwest's local service freeze protection service are hereby released from such service.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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